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BY THE HOUSE OF DELEGATES,
March 4, 1844.

Read and ordered to be printed.

R E P O R T

OF THE

Committee on Grievances & Courts of Justice,

RELATIVE TO

T H E C H A R T E R

OF THE

PHILADELPHIA, WILMINGTON AND BALTIMORE
RAIL ROAD COMPANY.

In obedience to an order of the House of the 28th December.

R E P O R T .

The committee on Grievances and Courts of Justice to whom was referred an order of the House of Delegates of the 28th of December, directing certain enquiries relative to the Philadelphia, Wilmington and Baltimore Rail Road Company, beg leave to submit the following

R E P O R T :

By the order of the House of Delegates of the 28th of December, the committee were directed "to enquire into, and report to the House whether the Philadelphia, Wilmington and Baltimore Rail Road Company has not violated its charter by entering into combinations prejudicial to the public interest." In obedience to the above order, the committee proceeded to propound to the President of the Philadelphia, Wilmington and Baltimore Rail Road Company, the following interrogatories, and received in reply the answers of the company herewith submitted.

Interrogatories on the part of the Committee on Grievances and Courts of Justice, of the House of Delegates of the Legislature of Maryland, propounded to M. Brooke Buckley, President of the Philadelphia, Wilmington and Baltimore Rail Road Company, as follows, to wit:

1st. Whether the Philadelphia, Wilmington and Baltimore Rail Road Company, has not entered into a contract or agreement uniting the interests of that company with those of the "Pennsylvania, Delaware and Maryland Steam Navigation Company?" And if so—what are the terms and conditions of such contract or agreement?

2nd. Whether, said rail road company, has not entered into a contract or agreement with the Delaware and Chesapeake Canal Company? And if so, what are the nature and terms of such contract or agreement?

3rd. What was the fare charged from Baltimore to Philadelphia upon said rail road, on the first day January, April, July and October, in the years 1839, 1840, 1841, 1842, 1843 and on the first day of January 1844?

4th. What was the amount charged per 100 pounds on freight, on the days mentioned in the third interrogatory?

5th. Whether said rail road company, entered into an agreement with the Baltimore and Ohio Rail Road Company, in reference to the rate of charges for passengers or freight upon said roads? And if so, when was said agreement entered into, what were its terms and conditions and when and why was said agreement rescinded?

6th. Whether said rail road company entered into an agreement with Stockton, Falls & Co., in reference to the carriage of passengers and freight, or either? And if so, when was said agreement entered into, what were its terms and conditions, and when and why was said agreement rescinded?

7th. Whether said rail road company considers the ferry at Havre-de-Grace as included in its charter and as part thereof, or as a common highway, and what are the charges by said company, at said ferry for the transportation of passengers or freight?

To the foregoing Interrogatories, the undersigned most respectfully answers, as follows:

1. To the first interrogatory, he answers, that the Philadelphia, Willmington and Baltimore Rail Road Company has not entered into any contract or agreement, uniting the interests of the said company with those of the "Pennsylvania, Delaware and Maryland Steam Navigation Company." Nor entered into any other contract or agreement of any nature or description whatever, with the said Steam Navigation Company.

2. To the second interrogatory, the undersigned answers, that the said Philadelphia, Willmington and Baltimore Rail Road Company did enter into a temporary arrangement, contract or agreement with the Chesapeake and Delaware Canal Company, the nature and object of which will appear by the Exhibits and Documents hereunto annexed, marked A.

3. To the third interrogatory, the undersigned answer, that the fare charged from Baltimore to Philadelphia, and from Philadelphia to Baltimore, on the said rail road by the regular line of said company for the conveyance of passengers, on the first day of January, April, July and October, in the years 1839, 1840, 1841, 1842, 1843 and on the first day of January, 1844, was four dollars, including tolls and transportation. That the said company, from the thirteenth of November to the twenty-fourth of December, in the year 1842, run a second line or train of cars for merchandize, and as an accommodation line, principally for emigrants, in which the fare charged from city to city, was two dollars. That from the thirtieth of October to the eighteenth of November, 1843, the said company also run a second line or train of cars for merchandize, and as an accommodation line for passengers, in which the fare charged from city to city, was three dollars. That both these second lines or trains were slow lines, carrying freight and merchandize.

4. To the fourth interrogatory the undersigned answers, that on the several days in the respective years mentioned in the third interrogatory, the regular charge on freight per one hundred pounds, for transportation and tolls, has varied, but at no time exceeded sixty cents per one hundred pounds; and that the present charge for transportation and tolls is fifty cents per one hundred pounds.

5. To the fifth interrogatory, the undersigned answers, that no agreement was formally entered into by the said Philadelphia, Wilmington and Baltimore Rail Road Company, with the Baltimore and Ohio Rail Road Company, respecting the rate of charges for passengers and freight, or for either, on the roads of said companies. But there was an agreement informally made, which was merely verbal, and never reduced to writing, in reference to the transportation of passengers, but not as to freight. That by this verbal arrangement or understanding, the price of a ticket for conveying a passenger between Wheeling and Philadelphia, was fixed at thirteen dollars; of which sum the stage companies on that route, received six dollars; the Baltimore and Ohio Rail Road Company four dollars and fifty cents, and the Philadelphia, Wilmington and Baltimore Rail Road Company received two dollars and fifty cents; that this informal and verbal arrangement was made about the beginning of July, 1843. That it was entered into merely as a temporary arrangement, and was terminated on the part of the Philadelphia, Wilmington and Baltimore Rail Road Company on the first day of December, 1843, because they considered that they did not receive a fair proportion of the sum charged as aforesaid; and therefore that it was not to their interest that such temporary arrangements, should continue longer.

6. To the sixth interrogatory, the undersigned answers, that on the twenty-third of November, 1840, the said Philadelphia, Wilmington and Baltimore Rail Road Company, made an agreement with Stockton, Falls & Company, to which Hutchinson and Wearts & Company were also parties, in reference to the carriage of passengers, but not of freight. That the terms and conditions of the said agreement will best appear from the said agreement itself, a true copy whereof is hereunto annexed, marked (B,) as part of the answer to this interrogatory. The undersigned further answers, that the said agreement was made before he became a director of the Philadelphia, Wilmington and Baltimore Rail Road Company, and he has no personal knowledge of the same. That no other agreement, to the best of his knowledge and information and belief, was ever made between the said Philadelphia, Wilmington and Baltimore Rail Road Company and said Stockton, Falls & Co. That in the agreement set forth in answer to the fifth interrogatory, made by the last said rail road company with the Baltimore and Ohio Rail Road company, the said Stockton, Falls & Company, being Stage proprietors on the route from Wheeling, were necessarily included. But the agreement was made with them by the Baltimore and Ohio Rail Road Company, and not by the Philadelphia, Wilmington and Baltimore Rail Road Company. That the

said agreement with said Stockton, Falls & Co. of the twenty-third of November 1840, was discontinued, but when, or whether it was mutually discontinued by the parties, or by either, or which of them, and why it was discontinued the undersigned has not the means, at present, within his power of ascertaining; and therefore is unable further to answer this interrogatory.

7. To the seventh interrogatory, the undersigned answers. That the said Philadelphia, Wilmington and Baltimore Rail Road Company do not consider, nor do they recognize, that part of the Susquehanna river at Havre-de-Grace, between the wharves or landing places erected by the said company, on each side of the said river, as a *public ferry*: but regard the right of crossing the said river at that place from the one of said wharves or landing places to the other, as the exclusive right of the said company, under and by virtue of their charter. That they never have considered, nor do they now consider their steamboat heretofore, and now, used in crossing the said river, as a *ferry boat*: but that the right of way in crossing between the said two wharves or landing places—is a continuation or extension of their road, under the authority of their charter: that the said rail road company never have charged nor do they now charge for the transportation of passengers from one of the said wharves or landing places to the other by their said steamboat, as for a *ferry*; but when they have charged for such transportation, they have made such charge for it, as part of their road, and have been governed in making such charge, by that provision in their charter, passed by the Maryland Legislature at the December session 1834, chapter 288 section 28;—which authorises the said rail road company to charge and take for the transportation of any parcel or article on their rail road, any distance whatever, twelve and an half cents, and a like sum for taking up and setting down any person who shall travel a distance not exceeding eight miles, in addition to the other charges allowed by their charter.

All which is respectfully submitted,

M. BROOKE BUCKLEY,

President.

OFFICE OF THE PHILA., WILMINGTON & BALT. R. R. Co.

January 24th, 1844.

STATEMENTS.

[A.]

Copy of the agreement made between the Chesapeake and Delaware Canal and the Philadelphia, Wilmington and Baltimore Railroad companies, referred to in answer to the second interrogatory.

COPY No. 1.

PHILADELPHIA, 7th Mo. 17th, 1843.

The undersigned, a committee of the Chesapeake and Delaware Canal company, will recommend to the directors of that company to charge a toll upon passengers passing through said canal, to and from Philadelphia and Baltimore, equal to one-half of the charge that shall be made by the Newcastle and Frenchtown Turnpike and Railroad company; provided the charge for the transportation of passengers by that route shall not exceed the charge by the Philadelphia, Wilmington and Baltimore Railroad, either by the road, or by the road and steamboats.

Provided, further, that the Philadelphia, Wilmington and Baltimore Railroad company and the Newcastle and Frenchtown Turnpike and Railroad company charge fifty cents per hundred pounds upon all merchandise passing on their works and boats to and from Baltimore to Philadelphia, and pro-rata upon the same for all shorter distances, with the exception of live stock and marketing; and provided also, that on passengers to or from any point along the line of the canal between Delaware and Chesapeake cities, there shall be charged one-half of the above stipulated rate of toll.

The Newcastle and Frenchtown Turnpike and Railroad company and the Philadelphia, Wilmington and Baltimore Railroad company to furnish to the Chesapeake and Delaware Canal company, a list of their rates of charge for passage on the different classes of passengers, and the toll on merchandise, and not to make any variation for them, without due notice to the Chesapeake and Delaware Canal company.

[Signed.]

HENRY COPE.

G. SCULL,

ALG'N S. ROBERTS,

} Committee.

To M. Brooke Buckley, A. J. Lewis, C. H. Fisher, committee, &c.

7
No. 2.

PHILADELPHIA, July 17th, 1843.

The undersigned, a committee of the Philadelphia, Wilmington and Baltimore Railroad company and the Newcastle and Frenchtown Turnpike and Railroad company, on behalf of the said companies, will agree to charge fifty cents per hundred pounds upon all merchandise passing on their works and boats, to and from Baltimore to Philadelphia, and pro-rata upon the same for shorter distances, with the exception of live stock and marketing.

Provided, that the Chesapeake and Delaware Canal company, will charge a toll on all passengers passing through their canal to and from Philadelphia to Baltimore, equal to one-half the charge that shall be made by the Newcastle and Frenchtown Turnpike and Railroad company, provided the charge for the transportation of passengers by that route shall not exceed the charge by the Philadelphia, Wilmington and Baltimore Railroad, either by the road, or by the road and steamboats; and provided also, that on way-passengers to and from any point along the line of the canal, between Delaware and Chesapeake cities, there shall be charged one-half of the above stipulated rates of toll.

The Newcastle and Frenchtown Turnpike and Railroad company and the Philadelphia, Wilmington and Baltimore Railroad company, will furnish to the Chesapeake and Delaware Canal company a list of their rates of charge for passage on the different classes of passengers, and the charge on merchandise, and will make no variation from them, without due notice to the Chesapeake and Delaware Canal company.

[Signed,] M. BROOKE BUCKLEY, }
A. J. LEWIS, } Committee.
C. H. FISHER, }

To Messrs. Henry Cope, G. Scull and A. S. Roberts, committee. &c.

No. 3.

CHESAPEAKE & DEL. CANAL OFFICE, }
Philadelphia, July 18th, 1843. }

DEAR SIR: I am directed by the Board of Directors of this company, to inform you that they have adopted the arrangement made by the committees of the Philadelphia, Wilmington and Baltimore Railroad and the Newcastle and Frenchtown Turnpike and Railroad companies and of this company, and that it is their wish that the arrangement should go into operation on the 25th inst.

I beg you to furnish me with a list of your rates of charge for passengers and merchandise, as specified in the agreement, for our

government, and to say, if the day named will suit your convenience.

Very respectfully,

Your ob't. servant,

[Signed,]

C. NEWBOLD, Jr.

President.

To M. Brooke Buckley, Esq.

President, Philad. Wil. & Balt. R. R. Co.

No. 4.

OFFICE, PHIL. WIL. & BALT. R. R. Co.

Philadelphia, July 18th, 1842.

DEAR SIR: I am in receipt of your favor of this date, and upon consultation with the committee of this and the New Castle and Frenchtown Turnpike and Rail Road company, I am directed to inform you that the prices of passage between Philadelphia and Baltimore, during this season, will be fixed as follows:

By the New Castle and Frenchtown Route,

For Adult passengers	- - - - -	\$3 Each.
" Colored do	- - - - -	2 "
" Children under 8 years of age,		half price.

By Philadelphia, Wilmington and Baltimore Rail Road,

For Adult passengers,	- - - - -	\$4 Each
" Colored do	- - - - -	3 "
" Children under 8 years,	- - - - -	half price.

The rate of freight by both routes, will be fifty cents per hundred pounds, on all merchandise transported between Philadelphia and Baltimore, and proportionate rates, for shorter distances.

The committee agree with me in opinion, that it is expedient to to commence this arrangement as early as possible, say on Thursday, 20th inst.

Very Respectfully,

Your ob't. servant,

[Signed,]

M. BROOKE BUCKLEY,

President.

To C. Newbold, Jr.

Pres. Ches. & Del. Canal Co.

PHIL. WIL. & BALT. R. R. Co.

January 24th, 1844.

I hereby certify the foregoing copies, No. 1, 2, 3 and 4, to be correct extracts from the minutes of a meeting of the Board of Directors of this company, held August, 8th, 1843, at which agreement therein set forth, was accepted and approved.

A. CAMPBELL, Sect.

[B.]

Copy of an agreement, referred to in the foregoing answer, to interrogatory sixth.

BALTIMORE, November 23, 1840.

Memorandum made between the Philadelphia, Wilmington and Baltimore Rail Road Company, of the one part, and Stockton, Falls, & Company, and Hutchinson and Weart, of the other part, stage proprietors, to wit:

They (S. F. & Co. and H. & W.) to be allowed one dollar for every *through passenger from* Wheeling, Washington, Brownsville, Uniontown, Cumberland, Hancock or Hagerstown *to* Philadelphia, and the same sum on every *through passenger from* Philadelphia *to* either of the above points. Or in other words, they to pay to the Philadelphia, Wilmington and Baltimore Rail Road Company, on every such passenger, three dollars, instead of the present rate of four dollars.

Settlement to be made at the end of each month at Philadelphia and Baltimore.

This arrangement may be discontinued at any time by the Philadelphia, Wilmington and Baltimore Rail Road company, upon a notice of fifteen days, or whenever a mutual arrangement of price shall take place between the present rival stage proprietors, of which S. F. & Co. and H. and Weart, compose one party.

[Signed,]

J. I. COHEN, Jr.

V. P. Phil. Wil. & Balt. R. R. Co.

[Signed,]

STOCKTON, FALLS, & Co.

[Signed,]

HUTCHINSON & WEART, & Co.

From the foregoing answers, and the copies of the several contracts therein mentioned, it appears clearly that combinations or agreements have been entered into between the Philadelphia, Wilmington and Baltimore Rail Road Company, the Delaware and Chesapeake canal company, and the New Castle and Frenchtown Turnpike and Rail Road company, for the purpose of regulating the charge for passengers and freight carried on said works respectively. The only question referred to the decision of the committee was, whether the contracts thus entered into by the Philadelphia, Wilmington and Baltimore Rail Road company, have been made in violation of its charter.

Upon due examination of the several acts of Assembly, under which the present company has been invested with its corporate powers, the committee have not been able to discover any provision expressly prohibiting said company from entering into such contracts. The act of 1832, chap. 304, being "a supplement to an act entitled an 'act to incorporate the Baltimore and Port De Posit Rail Road company,' and to 'an act to incorporate the Delaware and Maryland Rail Road company,'" contains a proviso, "that nothing in this act contained shall be so construed as to authorise

any contract or junction being made with the New Castle and Frenchtown turnpike and Rail Road company, by either of the companies first above named, or by the company which they or any other company or companies may constitute." But the second section of the last mentioned act declares that the provisions of the act shall be of no effect until it "shall have been approved and accepted by a majority of votes of the stockholders of said Rail Road companies." This act never was accepted by said companies. It therefore does not now constitute any part of the charter of the Philadelphia, Wilmington and Baltimore Rail road company.

There is nothing then, in the charter of said company expressly prohibiting it from entering into the contracts which it has formed. The committee are aware that the charters of incorporated companies, must be strictly construed; and that they possess only such powers as are expressly granted, or which result from the granted powers, by necessary implication. Is the power of the Rail Road Company to enter into contracts with other incorporated companies a power to be implied from the provisions of its charter? The company certainly possesses the power of entering into contracts. It may contract with individuals; it may contract with mercantile firms for the purposes of transporting their merchandise. If it has the power of forming contracts with individuals, or any number of individuals, may it not then contract with other incorporated companies? If so, where is the limit to be fixed?

It may be said, that if these incorporated companies be permitted to combine together for the purpose of regulating their charges, the public might sustain great inconvenience and imposition. The Legislature have wisely provided against this result, by fixing in the charters of all of these companies, a maximum rate of charges which they cannot exceed. The public therefore, can never be made to feel any serious imposition. There is nothing to show that the Philadelphia, Wilmington and Baltimore Rail Road company has charged a higher rate of tolls than its charter allows. However odious and censurable the combinations formed by said company may appear, the committee do not believe that such combinations can be considered to operate as a forfeiture of its charter.

COLEMAN YELLOTT,
J. R. FRANKLIN,
WM. S. WATERS,
ZABDIEL WEBB POTTER.

[Document HH.]

BY THE HOUSE OF DELEGATES

March 5, 1844.

Read and ordered to be printed.

R E P O R T

OF THE

Committee on Grievances and Courts of Justice,

TO WHOM

WERE REFERRED THREE ORDERS

OF THE

HOUSE OF DELEGATES,

RELATIVE TO

T H E J U D I C I A R Y .

Severally adopted on the 5th and 9th of February, and the 1st of
March.
